

## Federal Communications Commission

DA 05-2017

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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JUL 15 2005

FCC-MAILROOM

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Parker, Prescott Valley, Mayer,  
Miami, and Ajo, Arizona)

MB Docket No. 04-252  
RM-11120

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: July 13, 2005

Released: July 15, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division of the Media Bureau has before it for consideration the *Notice of Proposed Rulemaking*<sup>1</sup> proposing changes in the FM Table of Allotments, 47 C.F.R. § 73.202(b). In response to a petition filed by Farmworker Educational Radio Network, Inc. ("FERNI"), licensee of Station KRIT(FM), Channel 230C3, Parker, Arizona, the *Notice* proposes to change the channel of license for Station KRIT(FM) from Channel 230C3 to Channel 252B1. FERNI's request was filed pursuant to the provisions of Section 1.420(g) of the Commission's Rules, which permits the modification of a station's authorization to specify another class of channel at the same community. FERNI represents that if its request is granted, it will file an application to modify the facilities of Station KRIT(FM) to specify operation on Channel 252B1 at Parker, Arizona. FERNI filed comments supporting the changes proposed in the *Notice*.

2. A counterproposal was submitted by 3 Point Media-Prescott Valley, LLC, licensee of Station, KKLD(FM), Channel 252C2, Prescott Valley, Arizona ("3 Point").<sup>2</sup> In lieu of the change in allotment from Channel 230C3 to Channel 252B1 at Parker, as proposed by FERNI, 3 Point requests an upgrade and change of community for Station KKLD(FM), from Channel 252C2, Prescott Valley, Arizona, to Channel 252C, Mayer, Arizona. In order to accommodate that upgrade and change of community, 3 Point requests a channel substitution and relocation of the transmitter site for Station KQSS(FM), Miami, Arizona, from Channel 252A to Channel 270A. William D. Taylor, licensee of Station KQSS(FM), has consented to those changes. To further accommodate the upgrade and change of community for Station KKLD(FM), 3 Point requests that Channel 295A be substituted for vacant Channel 252A at Ajo, Arizona.

3. In reply comments, FERNI states that it consents to the changes proposed by 3 Point, with one modification. FERNI states that the changes requested by 3 Point can be implemented if Channel 224B1, rather than Channel 252B1, as FERNI originally requested, is substituted for Channel 230C3 at Parker. With that modification, FERNI advocates adoption of the counterproposal. FERNI contends that its

<sup>1</sup> Parker, Arizona, 19 FCC Rcd 12,840 (MB 2004) ("Notice").

<sup>2</sup> The counterproposal initially was filed jointly by W. Grant Hafley, then-licensee of Station KKLD(FM), and by 3 Point, as proposed assignee of KKLD. On May 2, 2005, the parties consummated the assignment of license of Station KKLD(FM) to 3 Point, which is now the licensee.

modified proposal would permit adoption of both proposals. FERNI states that Channel 224B1 is available for allotment at Parker as a result of the *Report and Order* in MB Docket No. 02-12, which modified the license of Station KRRN(FM) to specify operation on Channel 224C at Moapa Valley, Nevada, rather than at Dolan Springs, Arizona.<sup>3</sup>

4. Because the license of Station KRRN(FM), Channel 224C, has been modified to specify Moapa Valley, Nevada, as the station's community of license, Channel 224B1 can be allotted at Parker in compliance with the minimum distance separation requirements of the Commission's Rules. The universal solution proposed by FERNI thus is technically acceptable and would satisfy the requirements of section 1.420(g) of the Commission's rules.<sup>4</sup> We must, however, first evaluate whether the upgrade and change of community for Station KKLD(FM) is in the public interest.

5. In deciding whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>5</sup> Retention of Channel 252C2 at Prescott Valley would satisfy only the fourth allotment priority, "other public interest matters,"<sup>6</sup> whereas the proposed upgrade and reallocation of Channel 252C at Mayer would satisfy the third allotment priority, "first local service."

6. Although Mayer is not located in an Urbanized Area, the proposed 70 dBu contour would increase KKLD's coverage of the Prescott, Arizona Urbanized Area from approximately 38 percent to 100 percent. For that reason a *Tuck* analysis is required to demonstrate Mayer's independence from Prescott, the central city of the Prescott, Arizona, Urbanized Area.<sup>7</sup>

7. Mayer, Arizona, is listed in the 2000 U.S. Census with a population of 1,408 persons. Mayer has its own zip code (86333), post office, fire department, water district, public library, and school system, consisting of two elementary, two junior high, and one high school. Mayer has its own chamber of commerce, health care providers, and dozens of businesses, including many that include the word "Mayer" in their business names. The distance of Mayer from Prescott (26 kilometers) and their relative sizes (Mayer's population is 4.2 percent that of Prescott's) both compare favorably to those of other communities granted a first local preference. Moreover, 3 Point presents convincing evidence that Mayer residents perceive Mayer as separate from Prescott. We therefore find that Mayer is independent of Prescott and is

<sup>3</sup> See *Ash Fork, Chino Valley, Dolan Springs, Fredonia, Gilbert, Peach Springs, Seligman, and Tusayan, Arizona; Moapa Valley, Nevada; Beaver and Cedar City, Utah*, 18 FCC Rcd 24,706 (MB 2003).

<sup>4</sup> See 47 C.F.R. § 1.420.

<sup>5</sup> 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

<sup>6</sup> Prescott Valley would continue to be served by local Stations KPPV(FM), Channel 294C2, and KQNA(AM).

<sup>7</sup> See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("*Tuck*"), and *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C.Cir. 1951) ("*Huntington*").

entitled to preference for a first local service.

8. For all of the foregoing reasons, we conclude that the public interest would be served by: substituting Channel 224B1 for Channel 230C3 at Parker, Arizona; upgrading Channel 252C2 at Prescott Valley, Arizona, to Channel 252C, and reallocating Channel 252C at Mayer, Arizona; substituting Channel 270A for Channel 252A at Miami, Arizona; and substituting Channel 295A for vacant Channel 252A at Ajo, Arizona. Channel 224B1 can be allotted at Parker in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 15.5 kilometers (9.6 miles) northeast of Parker at reference coordinates of: 34-16-00 NL and 114-12-00 WL. Channel 252C2 at Prescott Valley can be upgraded to Channel 252C and reallocated at Mayer with a site restriction of 18.1 km (11.2 miles) southwest of Mayer, at reference coordinates of: 34-15-03 NL and 112-19-11 WL. Channel 270A can be substituted for Channel 252A at Miami with a site restriction of 9.8 km (6.1 miles) northeast of Miami, at reference coordinates of: 33-28-31 NL and 110-48-51 WL. Finally, Channel 295A can be substituted for vacant Channel 252A at Ajo with a site restriction of 0.3 km (0.2 miles) northeast of Ajo, at reference coordinates of: 32-22-27 NL and 112-51-49 WL. Concurrence in all of these allotments is required because the proposed allotments are located within 320 kilometers (199 miles) of the U.S.-Mexican border. Although Mexican concurrence has been requested, notification has not been received. If a construction permit for any of the channels is granted prior to receipt of formal concurrence by the Mexican government, the authorization to operate on that channel shall include a provision subjecting operation of the facilities to modification, suspension, or termination under certain specified conditions. Specifically, the authorization shall read: "Operation with the facilities specified herein for [name of community], is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Mexico-United States FM Broadcast Agreement, or if specifically objected to by the Government of Mexico."

9. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. §801(a)(A).

10. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b), 0.283, and 1.420(i), IT IS ORDERED, That effective August 29, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel Number</u>
Ajo, Arizona	295A
Mayer, Arizona	252C
Miami, Arizona	270A
Parker, Arizona	224B1
Prescott Valley	294C2

13. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Farmworker Educational Radio Network, Inc. for Station KRIT(FM), Channel 230C3, Parker Arizona, IS

MODIFIED to specify operation on Channel 224B1 at Parker, Arizona, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

14. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of 3 Point Media-Prescott Valley, LLC, for Station KKLD(FM), Channel 252C2, Prescott Valley, Arizona, IS MODIFIED to specify operation on Channel 252C at Mayer, Arizona, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

15. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of William D. Taylor for Station KQSS(FM), Channel 252A, Miami Arizona, IS MODIFIED to specify operation on Channel 270A at Miami, Arizona, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

14. IT IS FURTHER ORDERED, That pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (2)(k), 3 Point Media-Prescott Valley, LLC, licensee of Station KKLD(FM), is required to submit a rule making fee in addition to the fee required for the applications to effectuate the changes in its license, as specified above.

15. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this Order to the following:

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(Counsel for 3 Point)

William D. Taylor  
Post Office Box 292  
Miami, Arizona 85539  
(Licensee of Station KQSS(FM))

16. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

17. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau, (202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau